

**PETER H. LIEDERMAN SB NO. 201103**  
**2444 Russell St.**  
**Berkeley CA 94705-2038**  
**Voice: 510-681-6916**  
**Facsimile: 510-540-6390**  
*berkeleylawfirm@gmail.com*  
Attorney for Kenneth G. Renz, Defendant  
and Estate of Jackson R. Dennison

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO

WELLS FARGO BANK, N.A., as TRUSTEE  
for the CLARA POPPIC TRUST

Plaintiff,

vs.

KENNETH G. RENZ; ESTATE OF JACKSON  
R. DENNISON; ESTATE OF WILEY  
UMSTEAD; KAZUKO UMSTEAD; WON  
JAE YI aka MICHAEL YI; NAN Y. PARK;  
GUAN HUANG; YING ZHANG and SUI  
SONG,

Defendant

Case No.: No. CV 08- 2561 EMC  
Hon. Edward M. Chen

Complaint filed: May 21, 2008  
Trial Date: Not Set

NOTICE OF MOTION AND MOTION  
TO DISMISS, Fed R. Civ. P. 12(b)(1)

Hearing Date: August 20, 10:30  
Hearing Time: 10:30  
Hearing Dept: C

TO ALL ATTORNEYS OF RECORD AND DEFENDANTS IN PROPRIA PERSONA,  
NOTICE IS HEREBY GIVEN that on August 20, 2008, in Department C, located on the 15<sup>th</sup>  
Floor of 450 Golden Gate Avenue in San Francisco at 10:30 AM or as soon thereafter as the  
matter may be heard, Defendant KENNETH G. RENZ, and Defendant Estate of Jackson R.  
Dennison will and does move as follows:

- 1 To dismiss the action on the ground that the court lacks jurisdiction because Plaintiff, a private  
2 citizen, has not complied with notice requirements for a complaint under 42 U.S.C. § 9607, as  
3 required by 42 U.S.C. § 6972(a), and 42 U.S.C. § 9659 (a) (1), and because no other basis for  
4 Federal jurisdiction exists.
- 5 2. In the event that any portion of this case is not dismissed, defendant requests leave to  
6 assert defenses, counter, and cross claims.

7 As the attached Memorandum of Points and Authorities more fully explains, the law is well-  
8 established that failure to provide sufficient notice in a citizen suit under Title 42 provisions requires  
9 dismissal. Requiring citizens to comply with the notice and delay requirements furthers  
10 Congress' goal of striking a balance between encouraging citizen suits and avoiding burdening  
11 the federal courts with excessive numbers of such suits, since notice allows government agencies  
12 and alleged violators to achieve compliance without the need for suit. *Hallstrom v. Tillamook*  
13 *County* 493 U.S. 20 (1989), p 21 110 S.Ct. 304, 107 L.Ed.2d 237, 58 USLW 4007. The RCRA  
14 provisions discussed in *Hallstrom* are reiterated in CERCLA, and applied to 42 U.S.C. § 9607  
15 lawsuits by 42 U.S.C. § 9659 which governs citizen suits arising under the chapter in which §  
16 9607 falls.

17 The question of injuries to Plaintiff's real property, or under Calif. Health and Safety Code §§ 25300,  
18 25395 in Plaintiff's Second and subsequent causes of action, present only questions of state law.  
19 Pursuant to 28 U.S.C. § 1367(c)(3) "The district courts may decline to exercise supplemental  
20 jurisdiction over a [state-law] claim . . . if . . . the district court has dismissed all claims over  
21 which it has original jurisdiction."; *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 n. 7, 108  
22 *S.Ct.* 614, 98 L.Ed.2d 720 (1988). See also *Hallstrom v. Tillamook County* 493 U.S. 20 (1989).

24 This motion is based on the accompanying Memorandum of Points and Authorities and papers on  
25 file in this action, this motion, the incorporated Notice of Motion, the accompanying memorandum of

LAW OFFICE OF PETER H. LIEDERMAN

Case No. CV08- 2561